YVETTE DONOSSO (8667)
Assistant Utah Attorney General
SEAN D. REYES (7969)
Utah Attorney General
Attorneys for Defendants
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Facsimile: (801) 366-0101
ydonosso@utah.gov

---

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

| | |
|---|---|
| SARA KING-FLITTON,<br><br>Plaintiff,<br><br>vs.<br><br>DAVIS SCHOOL DISTRICT and BECKY BOUVANG,<br><br>Defendants. | **BOUVANG'S MOTION TO DISMISS AND SUPPORTING MEMORANDUM**<br><br>Case No. 1:14-CV-0097<br><br>Judge Dale Kimball |

Defendant, Becky Bouvang, through counsel, and pursuant to Federal Rule of Civil Procedure 12(b)(6), and Local Rule 7-1, respectfully submits *Bouvang's Motion to Dismiss and Supporting Memorandum.*

Plaintiff's claims against Bouvang should be dismissed with prejudice. First, Title VII precludes Plaintiff's claims against Bouvang since she is not an employer under Title VII. Second, no private right of action exists for alleged violations of the Utah Anti-Discrimination Act

("UADA"). Thus, Plaintiff's Verified Complaint fails to state a claim upon which relief may be granted.

## ARGUMENT

### I. TITLE VII SEXUAL HARASSMENT: HOSTILE WORK ENVIRONMENT & RETALIATION CLAIMS AGAINST BOUVANG SHOULD BE DISMISSED.

Plaintiff asserts Title VII claims against Bouvang. But "personal capacity suits against individual supervisors are inappropriate under Title VII." *Haynes v. Williams*, 88 F.3d 898, 901 (10th Cir. 1996). This is because "[t]he relief granted under Title VII is against the *employer*, not individual employees whose actions would constitute a violation of the Act." *Sauers v. Salt Lake County*, 1 F.3d 1122, 1125 (10th Cir. 1993). Based on the precedent cited above, the first and second causes of action should be dismissed as to Bouvang because she is not an "employer" under Title VII.

### II. PLAINTIFF'S THIRD CAUSE OF ACTION, SEXUAL HARASSMENT AND RETALIATION IN VIOLATION OF THE UADA SHOULD BE DISMISSED BECAUSE THE UADA DOES NOT PROVIDE A PRIVATE CAUSE OF ACTION.

Plaintiff's third cause of action attempts to assert a state law claim--sexual harassment and retaliation under the UADA. However, the UADA provides only an administrative remedy before the Utah Labor Commission for violations of its provisions, not a private right of action. *See* Utah Code Ann. § 34A-5-107(15); *Buckner v. Kennard*, 99 P.3d 842, 852 (Utah 2004), *Blauer v. Dept. Workforce Servs.* 2014 UT App 100, ¶6 n2, 331 P.3d 1. Thus, Plaintiff's UADA claim is barred by the Act. Accordingly, Plaintiff's third cause of action should also be dismissed as to Bouvang.[1]

[1] The fourth cause of action, common law negligence, only applies to the District, so it not being addressed in this motion.

## CONCLUSION

For all the reasons stated above, the first three causes of action should be dismissed with prejudice as to Bouvang.

DATED this 24th day of September, 2015.

SEAN D. REYES
Utah Attorney General

/s/Yvette Donosso______
YVETTE DONOSSO
Assistant Utah Attorney General
Attorney for Bouvang